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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,295	12/20/2001	Gretchen Louise Elder	6823D	1812

27752 7590 03/21/2006

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,295

Applicant(s)

ELDER ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2005 and 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/14/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Note: Petition filed 9/2/04 requesting benefit of earlier filing date has not been granted to date.

### ***Election/Restrictions***

2. Applicant's arguments regarding the Election Requirement mailed 11/21/05 are persuasive. The Election Requirement is withdrawn.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-5 are rejected under 35 U.S.C. 102(a) as being anticipated by Roe USPN 5607760.

As to claim 1, Roe discloses a disposable article as claimed (Figure 3) having

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a) a vapor permeable backsheet **530** (col. 5, lines 60-61);  
b) a liquid pervious topsheet **520** positioned in facing relation with the backsheet 530;

c) an absorbent core **540** located between said backsheet and said topsheet (Roe col. 6, lines 46-49);

and d) a skin care composition on at least a portion of a wearer-contacting surface of the absorbent article (Roe Abstract and col. 10, lines 25-31), which comprises from about 10 to about 95 weight percent of an emollient (Roe col. 17, lines 61-64) and from about 5 to about 90 weight percent of a wax (Roe col. 21, lines 35-38) .

As to claim 2, Roe discloses the composition further comprises sorbitol, which is known in the art as a viscosity increasing agent and is selected from the claimed group of materials (Roe col. 10, lines 53-62).

As to claim 3, Roe discloses the emollient is selected from the claimed group of materials (Roe col. 15, line 47 through col. 16, line 24).

As to claim 4, Roe/McCormack discloses the emollient is a petroleum-based emollient selected from the group consisting of petrolatum, mineral oil, and mixtures thereof (Roe col. 16, lines 6-33).

As to claim 5, the wax is selected from the group consisting of the claimed materials (Roe col. 21, lines 20-24).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe USPN 5607760 in view of McCormack USPN 5695868. Roe discloses the present invention substantially as claimed. However, Roe does not disclose a vapor permeable backsheet, which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hours, calculated according to a Water Vapor

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Transmission Test. McCormack discloses a breathable film/nonwoven composite suitable for use as an outer cover in absorbent articles (col. 1, lines 13-26 and col. 16, lines 23-27). McCormack discloses the breathable film/nonwoven has a water vapor transmission rate of  $4100 \text{ g/m}^2/24 \text{ hrs.}$ , which is within the claimed range, (col. 15, line 65 through col. 16, line 7) for the benefit of providing breathability and reducing skin hydration (col. 16, lines 9-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the article of Roe with a vapor permeable backsheet having the claimed water vapor transmission rate for the benefits disclosed in McCormack. Additionally Roe discloses a breathable backsheet is desired (Roe col. 5, lines 60-62).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F. Stephens  
Primary Examiner  
Art Unit 3761

February 6, 2006